IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL MISCELLANEOUS APPLICATION NO. 231 OF 2003.

State through Deputy.
Conservator of Forests,
Wildlife & Ecotourism and
Wildlife Warden, Forest
Department, Junta House,
3rd Floor, Panaji. ... Applicant.

Versus

Illoy Almeida Coutinho,
r/o Per Seraulim,
Salcete Goa. ... Respondent.

Mr. S.N. Sardessai, Public Prosecutor for the Applicant/State.

Mr. A.P. Lawande, Advocate for the Respondent.

Coram : P.V. HARDAS, J.

Date : 14th November 2003.

ORAL JUDGMENT.

By consent of the learned counsel for the parties, this application is taken up for final hearing at the stage of admission.

2. This is an application filed by the State, being aggrieved by the Order, dated 16th September 2003, of the learned District and Sessions Judge, South Goa, Margao, in Anticipatory Bail Application No. 254 of 2003, directing the release of the applicant on bail in the event of his arrest in connection with the offence under the Wildlife (Protection) Act, 1972.

3. A brief reference to the facts is necessary

for the decision of this application.

4. On 10th September 2003, on the basis of information provided by the patrolling staff of Wildlife Range, Mollem, an offence was registered against the respondent herein and two others by Range Forest Officer, Mollem, under F.O.R. No. 1/2003-04 under Sections 9, 39 and 52 punishable under Section 51 of the Wildlife (Protection) Act, 1972 for killing 7 Indian Bisons. It is an admitted fact that two other persons, who had been arrested, were subsequently released on bail, after the prosecution had obtained their custody for custodial interrogation. The respondent herein, however, filed an application under Section 438 of the Code of Criminal Procedure before the learned District and Sessions Judge, Margao, who, by the Order impugned in the present application, released the applicant.

5. Relying on the Judgment of the Supreme Court in **Puran v. Rambilas and another**, 2001 Cri.L.J. 2566, Mr. Sardessai, the learned Public Prosecutor, appearing on behalf of the applicant/State, has urged before me that the plea of the applicant/State for rejection of the application of the respondent under Section 438 of the Code of Criminal Procedure on account of necessity of custodial interrogation has not been considered by the learned District and Sessions Judge, while passing

Order under Section 438 of the Code of Criminal Procedure. It is submitted that, apart from the recovery of the carcass of 7 Bisons, the trophies and the source of market, where the alleged meat was sold and on other aspects of the case, the custodial interrogation of the respondent was essential and, thus, a plea is made for cancellation of the bail granted to the respondent. It is also alleged before me that offences under the Wildlife (Protection) Act, 1972 are serious and do not call for granting anticipatory bail to the alleged offenders under the said Act.

6. I have heard Mr. Lawande, learned counsel appearing on behalf of the respondent and Mr. Sardessai, learned Public Prosecutor on behalf of the applicant/State and, according to me, the question whether the learned trial Court ought to have granted anticipatory bail to the respondent in the face of the need expressed by the Forest Department for custodial interrogation, needs to be examined afresh by the learned District and Sessions Judge. Accordingly, the Order impugned is set aside and the matter is remitted to the learned District and Sessions Judge, Margao, who shall decide the application afresh, preferably within 2 weeks from today. Meanwhile the respondent herein shall continue to remain protected by the Order of anticipatory bail granted in his favour till the

decision of his application by the learned District and Sessions Judge, Margao.

7. It is needless to add that the learned District and Sessions Judge shall not be influenced by any observations made by me in this Judgment.

8. In the result, Criminal Miscellaneous Application is allowed on the aforesaid terms. Parties to appear before the learned District and Sessions Judge, Margao, on 18th November 2003, at 10.00 a.m. Authenticated copy be given.

(P.V. HARDAS)
JUDGE.

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